

*Shasta*

**TRANSCRIPT OF RECORD**

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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1936**

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**No. 267**

**THE UNITED STATES OF AMERICA, APPELLANT**

**VS.**  
**FREIGHTS, SUB-FREIGHTS, CHARTER HIRE, AND/OR**  
**SUB-CHARTER HIRE OF THE U. S. "MOUNT SHASTA"**

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR**  
**THE DISTRICT OF MASSACHUSETTS**

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**FILED JANUARY 15, 1937**

**(31609)**

1. The first of these is the  
 fact that the system of  
 the world is not a  
 uniform one. It is a  
 system of many parts  
 and many parts are  
 not the same. The  
 system is a system of  
 many parts and many  
 parts are not the same.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 267

THE UNITED STATES OF AMERICA, APPELLANT

VS.

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SUB-CHARTER HIRE OF THE S. S. "MOUNT SHASTA"

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MASSACHUSETTS.

## INDEX

	Original Print	
Record from District Court of the United States, District of Massachusetts.....	1	1
Libel.....	1	1
Warrant and mention and marshal's return.....	6	4
Exceptions to libel.....	7	5
Answer.....	8	6
Exhibit.—Statement of account of the S. S. "Mount Shasta" with Palmer & Parker Co.....	13	9
Motion to amend libel.....	16	11
Motion to pay freights into court.....	16	11
Interrogatories of the United States to Palmer & Parker Co.....	16	11
Minute entries.....	17	12
Special appearance of Palmer & Parker Co.....	18	12
Motion for default.....	19a	14
Special appearance and objection of Palmer & Parker Co.....	20	14
Order granting motion to file answer.....	22	15
Answer.....	22	15
Exhibit.—Charter Party between Victor S. Fox & Co. and Palmer & Parker, July 14, 1920.....	33	23
Answer of Palmer & Parker to Interrogatories.....	35	26
Exhibit C.—Bill of lading.....	36	27
Minute entries.....	39	28
Final decree.....	39	29
Minute entry of order allowing appeal.....	39	29
Opinion, Morton, J.....	40	30
Petition for appeal.....	43	32
Assignments of error.....	44	32
Judge's certificate.....	45	33
Citation and service [omitted in printing].....	46	33
Clerk's certificate [omitted in printing].....	48	33
Orders enlarging time.....	49	33
Statement of points to be relied upon and designation by appellant to print the entire record.....	52	34

becomes due and payable, pay, discharge or make adequate provision for the satisfaction or discharge of every lawful claim or demand which, if unpaid, might in equity, in admiralty, at law or by any statute of this or any other nation where said vessel may be navigating or berthed, have such priority over the title and interest, or might operate as a lien, encumbrance or charge upon said vessel or cause its detention in port, provided, however, that this provision shall not apply to the extent that there may be pending on behalf of either of the parties hereto with solvent underwriters, not yet having been paid nor formally rejected, a claim for reimbursement on account of the matter on which any such lien is alleged to be founded, nor to the extent that the owner has or has received insurance money properly applicable as reimbursement on account of such matter, or to the payment or discharge thereof; always, however, subject to the condition that the said vessel be discharged from any lien, attachment or other detention under process or color of legal authority within fifteen days from time when the same attaches."

5. That said demise or bare boat charter among other things contained the following provision:

3. "The charter shall pay to the owner prior to the delivery of the vessel the sum of \$30,821.95, for the option to purchase hereinafter contained; and in addition thereto shall pay to the owner for the use of said vessel \$506,240.00 for said thirteen months, payable \$72,420 in advance upon delivery of vessel and \$36,210 (\$5.00 per DWT.) per calendar month thereafter in advance, and at and after the same rate for any part of a month; hire to continue until her delivery in like good order and condition to the owner (unless lost or unless charterer exercises option to purchase) at a United States Atlantic port north of Hatteras. All hire shall be paid to the owner in the District of Columbia, in gold coin or its equivalent."

"The owner shall have a lien upon all cargoes, and all sub-freights for any amounts due under this charter party."

For greater certainty libellant refers to said demise or bare boat charter and begs leave to produce a copy thereof at the trial of this cause.

6. Pursuant to the terms of said demise or bare boat charter alleged aforesaid, said steamship "Mount Shasta" was delivered to said Victor S. Fox & Company, Inc., on the thirtieth day of May, 1920, at which time the said Victor S. Fox & Company, Inc., accepted delivery of the said vessel and entered upon the performance of the terms of the said demise or bare boat charter above alleged.

7. That on July 14, 1920, said Victor S. Fox & Company, Inc., entered into a sub-charter (voyage) agreement with Palmer & Parker Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts and having a usual place of business in Boston in the District of Massachusetts, for the purpose of carrying a full and complete cargo of round and square mahogany logs on an under deck from three ports, Gold Coast, West Africa, Half Assinie, Axim and Secondi, to Boston, Mass., and pursuant to said

sub-charter (voyage) agreement the vessel was dispatched to Dakar and loaded by the charterer with twenty-two hundred and forty-seven (2247) mahogany logs, and arrived on February 19, 1921, with said cargo of logs at the port of Boston, Mass. For greater certainty as to the terms of said sub-charter (voyage) agreement between Victor S. Fox & Company, Inc., and Palmer & Parker Company of Boston, Mass., libellant refers to said sub-charter (voyage) agreement, and begs leave to produce a copy thereof at the trial of this cause.

8. That under the terms of the demise or bare boat charter above alleged there became due and payable to the libellant on the first day of March, 1921, the sum of two hundred and eighty-nine thousand, six hundred and eighty (\$289,680) dollars, as and for hire on the said steamship "Mount Shasta," from August 1, 1920, to April 1, 1921. That the said Victor S. Fox & Company, Inc., has failed and refused and still fails and refuses to pay said charter hire, although same has been duly demanded and the sum is now due and owing to the libellant.

9. That there is now due and unpaid as freight on the said cargo of 2247 mahogany logs, referred to in the seventh paragraph of this libel, the sum of one hundred thousand dollars (\$100,000.00) as near as can now be estimated, constituting the freights, sub-freights, charter hire, and or sub-charter hire for the said steamship "Mount Shasta" during the period of said charter referred to in the seventh paragraph of this libel; that said sum is now in the hands and possession of the said Palmer & Parker Company.

10. That under and by virtue of the demise or bare boat charter referred to in the second paragraph of this libel, entered into between the United States of America and Victor S. Fox & Company, Inc., and under and by virtue of all the contracts of affreightment and under the general maritime law, the United States has a lien upon said freights, sub-freights, charter hire, and or sub-charter hire for said hire due it under said demise or bare boat charter, which lien the United States desires to enforce in this action.

11. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the United States claiming a lien upon said freights, sub-freights, charter hire and or sub-charter hire in the sum of two hundred and eighty nine thousand six hundred and eighty dollars (\$289,680) now due it and unpaid as above set forth, prays that process in due from of law may issue against the freights, sub-freights, charter hire, and or sub-charter hire of said steamship "Mount

Shasta" and against all persons interested therein, and that a monition may issue against the said Palmer & Parker Company and against all other persons in interest, commanding it and them to pay the said freight money into court; that all persons interested therein may be cited to appear and answer under

oath in the premises and that this honorable court may be pleased to pronounce for the aforesaid damages and costs, and for such other and further relief as to justice may appertain and as this court is competent to give in the premises.

UNITED STATES OF AMERICA,  
By DANIEL J. GALLAGHER,  
*United States Attorney,*  
JAMES G. AYLWARD,  
*Assistant United States Attorney,*  
LEWIS GOLDMERE,  
*Proctors for the United States.*

COMMONWEALTH OF MASSACHUSETTS.

*Suffolk, ss:*

Boston, March 23, 1921.

Personally appeared James F. Aylward and made oath in due form that he is an assistant United States attorney within and for the District of Massachusetts, duly authorized to act on behalf of the United States by the Attorney General of the United States, and that he has subscribed the foregoing libel as proctor for the United States, and that the same is true to the best of his knowledge, information, and belief.

Before me,

WILLIAM E. HURLEY,  
*Notary Public.*

6

In United States District Court

*Warrant and monition and marshal's return.*

Thereupon, on said 23rd day of March, A. D. 1921, by order of the judge, a warrant and monition issued, commanding the marshal to give notice to all persons concerned that the foregoing libel had been filed and that trial would be had thereon at a district court, to be holden at the United States court house, at Boston, in said District of Massachusetts, on the first day of April next, at ten o'clock a. m.; and to give notice by advertising the same in the Boston Marine Guide, one of the public newspapers printed at said Boston, and by posting a copy of the same notice at the said court house in Boston, seven days at least before said day of trial; and to take said freights, sub-freights, charter hire, and/or sub-charter hire into his custody; and further to serve this precept by reading the same or giving a copy thereof to the master or other officer in charge of said vessel or freights, etc., and if no such person is found by him, then to serve the same in the manner aforesaid upon some owner or agent of said vessel or freights, etc., if any he finds within his precinct.

And the Marshal made a return as follows:

UNITED STATES OF AMERICA,  
*Massachusetts District, ss:*

Boston, March 24, 1921.

Pursuant hereunto, I have given notice to all persons concerned that the libel within named has been filed, and that trial will be had thereon on the first day of April, 1921, by advertising the substance of the within motion in the Boston Marine Guide, one of the public newspapers printed at Boston, in said district, and by posting up a copy of the same notice in the United States court house in Boston, in said district, seven days before the day within named for trial. And on the 24th day of March, 1921, I served the within precept upon Palmer & Parker Co., by giving in hand to Gordon Parker, vice-president thereof, a true and attested copy of the within precept, at Charlestown, in said district.

PATRICK J. DUANE,

*U. S. Marshal.*

By BENJAMIN J. SCULLY,

*Deputy U. S. Marshal.*

In United States District Court

*Exceptions to libel*

Filed September 16, 1922

*To the Honorable James M. Morton, Jr., Judge of the United States District Court for the District of Massachusetts:*

Exception of Palmer & Parker Co., respondent to the libel of United States of America "against the freights, sub-freights, charter hire, and/or sub-charter hire of the SS. 'Mount Shasta' now intact and in possession of the Palmer & Parker Co., of Boston, in the District of Massachusetts, claiming a lien thereon, and against all persons lawfully intervening therein and having any interest therein, in a cause of contract, civil and maritime," alleges as follows:

1. That the said libel fails to show that there was in the hands of the respondent at the time of the bringing of said libel, or at any time theretofore, any property constituting the subject matter of a lien, civil and maritime.

2. That the said libel fails to show that there was in the hands of the respondent at the time of the bringing of said libel, or at any time theretofore, any property subject to any lien, civil and maritime, whereof the said libellant might avail itself.

3. That the said libel fails to show that the libellant had at the time of the bringing of this libel, or at any time theretofore, possession of that cargo referred to in said libel in paragraphs seven, nine and ten, respectively.

4. That the said libel sets forth no cause of action against the respondent in contract civil and maritime, either express or implied.



5. That the said libel sets forth no admiralty and maritime cause of action whatsoever against the respondent.

Wherefore, the respondent prays that the libel may be, as to the respondent, dismissed with costs.

THOMAS HUNT,  
GASTON, SNOW, SALTUNSTALL & HUNT,  
Proctors.

8 In United States District Court

Answer

Filed September 18, 1922

*To the Honorable James M. Morton, Jr., Judge of the United States District Court for the District of Massachusetts:*

The answer of Palmer & Parker Co., a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its principal place of business at 101 Medford Street, Charlestown, City of Boston, District of Massachusetts, unto that libel of the United States of America, which the said libelant described therein as "its libel against the freights, subfreights, charter hire, and/or subcharter hire of the S. S. 'Mount Shasta' now intact and in the possession of Palmer & Parker Company of Boston, in the District of Massachusetts, claiming a lien thereon, and against all persons lawfully intervening therein or having any interest therein, in a cause of contract, civil and maritime."

By reason of the extraordinary form and unprecedented substance of the libel aforesaid, Palmer & Parker Co. is much preplexed as to the nature of the capacity in which it now appears before this honorable court, since it comes claiming no property which has been arrested by process, nor does it appear obedient to the commands of any monition issuing out of this honorable court. An exception to the form, substance and sufficiency of the said libel has been taken by its proctors, and is now before this honorable court.

But Palmer & Parker Co. is fearful lest by its continued silence and the lapse of time, it be technically precluded, by the terms and provisions of that certain act of Congress of the United States known as "An act authorizing suits against the United States in admiralty," etc., approved March 9, 1920, from availing itself of certain defenses which it might now and hereafter in good conscience propound, save for the possible temporal limitations imposed upon its rights by the terms and provisions of the act aforesaid. Therefore, Palmer & Parker Co. prays that it may, without prejudice to its aforesaid exception to the said libel, and to its right to answer hereafter more fully to the said libel, now appear as respondent.



The respondent, so appearing, upon knowledge, information, and belief, affirmatively alleges and articulately propounds, as follows:

1. That the United States of America is, and was, at all times hereafter mentioned, owner of the S. S. "Mount Shasta," as propounded in article 1 of said libel.

2. That the respondent at no time became a party to, or was bound by, any instrument identical with, or similar to, that alleged "demise or bare-boat charter" set forth, declared upon, or referred to in the said libel in articles 2, 3, 4, 5, 6, and 8, respectively, nor had the respondent, at any time hereinafter mentioned, notice of the existence of said alleged "demise or bare-boat charter" if any such instrument did and does exist, nor is it, as to the times hereinafter mentioned, chargeable with notice thereof.

3. That the respondent at no time entered into any undertaking, either express or implied, with the libellant, having to do with any matter in connection with that charter party of affreightment bearing date of July 14, 1920, covering the S. S. "Mount Shasta," set forth, declared upon, or referred to in said libel in articles 7, 9, and 10, respectively.

4. That the said charter party of affreightment was entered into between and executed by "Victor S. Fox & Company, Inc., Agents," for principals and/or owners undisclosed, and Palmer & Parker Co., charterers.

5. That the S. S. "Mount Shasta" on or about August 9, 1920, arrived at the port of Axim, Gold Coast, West Africa, for loading, and the said vessel at the time of her arrival at the said port was destitute of supplies, and the master of the said vessel was without funds for her proper disbursement, and the master of the said vessel, one A. Kuipers, did then and there solicit Ralph D. Sawyer, agent of the respondent for the ports of Axim and Seccondi, Gold Coast, West Africa, that he should supply and advance unto the said vessel such necessary supplies and moneys as were required by the said vessel that she might sustain her crew, load her cargo, and proceed upon her voyage.

6. That although the respondent as charterer of the said vessel was in no wise bound, by the terms and provisions of the said charter party, of affreightment, to disburse the said vessel, the said Ralph D. Sawyer did, as agent for the respondent, advance unto the said vessel sundry necessary supplies and moneys, and said advances were made to the said vessel at the said port of Axim and the said port of Seccondi, within the ebb and flow of the tide, upon the faith and credit of the said vessel, and upon the additional security of the freight.

7. That the said necessary supplies and moneys, furnished and advanced as aforesaid, are particularly set forth, item by item, in a photostatic copy of the statement thereof bearing date September 19, 1920, and duly approved by the said master, which photostatic

copy of statement is hereto annexed in four pages marked Schedule A, pages 1, 2, 3, and 4, expressly incorporated herein and made a part of this answer; and the value thereof was, and is, in pounds sterling of Great Britain, forty three hundred sixty one pounds, one shilling and two pence (£4361-2-1) and the interest thereupon, at the rate of six per cent per annum from September 19, 1929, is in amount five hundred twenty eight pounds, eight shillings and two pence (£528-8-2).

8. That there is this day owing and unpaid unto the respondent on account of aforesaid advances and on account of the interest aforesaid thereupon, a sum, according to the rate of international exchange this day prevailing, in the amount of twenty one thousand six hundred sixty dollars and thirty three cents (\$21,660.33).

9. That the sum of twenty one thousand six hundred sixty dollars and thirty three cents aforesaid still remains wholly due and owing to the respondent and is unpaid.

10. That the said sum of twenty one thousand six hundred sixty dollars and thirty three cents (\$21,660.33) due, owing

11 and unpaid as aforesaid, constitutes and is a deduction from any and all freights that were earned or might have been earned by the said S. S. "Mount Shasta" under the terms and provisions of the charter party of affreightment aforesaid, and said advances constitute and are for the respondent, pro tanto, a good and sufficient defence against the lawful claims of any and every person whatsoever making claim for freights earned and or due under the said charter party of affreightment, if any be, or become, now or at any time, due.

11. That the libellant is, was at the time of the bringing of the said libel, and has been at all times herein mentioned, a stranger to the said charter party of affreightment and to the entire transaction; nor had it, at any time herein mentioned, possession and control of the said S. S. "Mount Shasta" and or the cargo thereof.

12. That all and singular the premises are true, and if denied, in verification thereof the respondent prays leave to refer to depositions, exhibits, and other proofs to be by it shown in this cause.

Wherefore, the respondent prays that this honorable court will be pleased to pronounce against the libellant aforesaid, to dismiss the said libel, and to condemn the libellant in costs, and otherwise to administer right and justice in the premises.

PALMER & PARKER CO.,

By GORDON PARKER,

*Vice President.*

THOMAS HUNT,

GASTON, SNOW & SALTUNSTALL,

*Proctors.*

12 [Duly sworn to by Gordon Parker; jurat omitted in printing.]

13

## Exhibit to answer

STATEMENT.—S. S. "MT. SHASTA" IN A/C WITH PALMER &amp; PARKER CO. AXIN

Cr.

Dr.							
Aug. 9	To light due	11	4	—	Aug. 31	By cash from J. H.	
10	" cash on a/c	153	—	—	Lushie from dis-		
11/13	" cable & telegram	6	13	0	count		\$
"	boat hire	1	—	—	Balance	888	13 4
"	cash on a/c	160	—	—			
"	foodstuff from Mrs. Grant	50	3	—			
"	provisions from Macy & Co.	36	—	—			
19	" cash on a/c	260	—	—			
26	" foodstuff bills from Effuch Hyibus	140	10	—			
"	foodstuff William Fynn Sheet "C"	15	7	0			
"	foodstuff from Mrs. Grant	19	6	10			
"	foodstuff sheet No. 81	9	19	3			
"	cundry cash as pr. sheet or list No. 82	35	19	4			
"	boat hire	2	—	—			
"	bill for 10 bags rice from Grant & Co.	22	—	—			
"	bill from Quashie 5 bags rice	10	—	—			
"	cash chicken & boat hire	1	11	—			
"	5/8 11 meat sheet 85	64	18	—			
"	cash by order	—	5	—			
"	6 towns from R. Hamilton & Co.	3	3	5			
		<u>£888</u>	<u>13</u>	<u>4</u>			

£888 13 4

secondly. 1st trip.

To balance b/d.

Schedule A, page 1.

Aug. 26/31	To amt. b/d	888	13	4	Aug. 30/31	By cash from	
"	cash on a/c	200	—	—	"	Capt	34 5 —
"	—d—	200	—	—	"	Balance	2,328 5 11
"	L. S. Grochey cattle	376	5	—			
"	bill from Swansey Transp. Sec-						
	condice	82	2	6			
"	66 1 1 C	406	7	1			
"	F. & A. Swansey	—	15	—			
"	Telegrams	—	6	11			
"	Pump repairs	5	—	—			
"	Telegram	—	1	1			
		<u>£2,362</u>	<u>10</u>	<u>11</u>			
Sept. 1	To Balance	2,328	5	11	Sept. 8	By amt. carried	
"	Cash boat hire	—	10	—	down	2,682	3 4
"	—d—	—	10	—			
"	—d—	—	10	—			
6	" washings	6	15	4			
"	medical attendance	6	6	—			
"	wages watchman	5	12	—			
7	" cablegram	3	4	—			
"	wages stevedore	3	9	—			
"	Foodstuff by William Fynn	5	18	9			
"	Do. Do. by Effuch	92	1	4			
"	F. & A. Swansey	250	11	—			
"	Cash boat hire	—	10	—			
		<u>£2,682</u>	<u>3</u>	<u>4</u>			
Sept. 8	To Amt. b/d down	2,682	3	4			
"	Bank charges on transfer to Com-						
	mands of cattle	3	11	—			
of		<u>2,685</u>	<u>14</u>	<u>4</u>			

£2,682 3 4

Schedule A, page 2.

# 10 UNITED STATES VS. FREIGHTS, ETC., OF S. S. "MOUNT SHASTA"

## Exhibit to answer—Continued

STATEMENT.—S. S. "MT. SHASTA" IN A/C WITH PALMER & PARKER CO. AXIM—Continued

Dr.			Cr.		
15	Sept. 9. To amt. Bt.	2 086 14 4			
18	" I. I. Co. Bill approved	414 18 8			
	" Doctor's bill 31.57 20	3 0 —			
	" Do. Do.	4 10 6			
	" Bills No. 10327 & 10323	35 — —			
	" Bill 599 & C Capt. 5246	18 17 6			
	" Bills from Cr Coast Mch'y 1800/410				
	A 433	20 1 —			
	To cash	100 — —			
	" draft on I Leone	503 — —			
	" trips, boat hire, bath water, Secun- doe (10% a)	1 — —			
	14/3/20				
	Cost for landing labourers custom fee	3 18 60			
	Bill 18. 92 for supplies	14 5 —			
		<u>£2,797 10 6</u>	Sept. 19. By amt. carried down	3,828 5 6	
	To Amt. of 346 H Mutton supplied of Sept. by Bada	30 13 —			
		<u>£2,828 5 6</u>		<u>£2,828 5 6</u>	
Sept. 19.	To amt. let. down	2,828 5 6			
					Schedule A, page 2.
15a	Sept. 19. To amt. for	3,828 5 6	Sept. 19. By supply of		
	" wages of stevedores as per list	349 8 8	hard to Star-		
	" do. for overtime	0 15 —	gers	32 11 9	
		<u>£4,183 9 —</u>		<u>£4,180 9 —</u>	
Sept. 19.	To balance due	4,180 17 9	Sept. 19. By balance c'd.	4,180 17 9	
	" amt. of doctor's bill at Secun- doe	3 10 —			
		<u>£4,183 7 9</u>			
	To balance	4,180 17 9	Sept. 19. By amt. of over-		
	" 10% agency fee on	207 13 0	time	13 14 6	
		<u>£4,387 1 2</u>	Balance due	4,387 0 8	
Sept. 19.	To balance due	£4,387 1 2		<u>£4,381 1 2</u>	

Four thousand three hundred & forty-seven pounds one shilling & two pence.

\*Agency commission.

Subject to owners approval E. & O. E.

STURPERS,  
Master S. S. Mount Shasta.

## In United States District Court

*Motion to amend libel*

Filed November 7, 1922

Now comes the United States and moves that its libel be amended in the following particulars:

Article 3. That the said steamship was chartered to the Mount Shasta Steamship Company, for whom Victor S. Fox & Company acted as general agents.

ROBERT O. HARRIS,  
United States Attorney.  
By CHARLES P. CURTIS, Jr.,  
Special Asst. U. S. Attorney.

## In United States District Court

*Motion to pay freights into court*

Filed November 7, 1922

Now comes the United States, and whereas process in due form of law having issued against Palmer & Parker Company of Boston in said district citing it to show cause why certain freight moneys due from it on account of a certain voyage of the S. S. "Mount Shasta" should not be paid into court, and whereas the said Palmer & Parker Company not having paid any of the said moneys into court, moves that this honorable court issue an order requiring said Palmer & Parker Company to pay into court, to abide any decree or decrees which may be entered in this cause, all the freight moneys due from it on account of the agreement or arrangement alleged in the 11th article of the libel.

ROBERT O. HARRIS,  
United States Attorney.  
By CHARLES P. CURTIS, Jr.,  
Special Asst. U. S. Attorney.

## In United States District Court

*Interrogatories of the United States propounded to Palmer & Parker Company*

Filed November 9, 1922

1. Did you on or about July 14, 1920, charter the S. S. "Mount Shasta" from Victor S. Fox & Company, agents, for a cargo of mahogany logs to be transported from West Africa to Boston, Massachusetts? If so, please annex a copy of the charter.

2. Did the "Mount Shasta" thereafter carry a cargo of mahogany logs from West Africa to Boston by virtue of the provisions of this charter?

3. Did you accept delivery of a cargo consisting of about 2,247 mahogany logs from the "Mount Shasta" in February, 1921, at Boston? If so, how many tons of 2,240 pounds of mahogany logs were delivered to you?

4. What was the freight per ton under the terms of this charter?

5. What was the demurrage per day under the terms of this charter?

6. Was any demurrage agreed to in writing between the master of the said steamship and Palmer & Parker by any of its agents? If so, please annex a copy of such agreement.

7. Was any bill of lading made out for any such shipment of mahogany logs? If so, please annex a copy.

8. Have any of the freights agreed to under the said charter party been paid by you to anyone?

9. If so, when were they paid and to whom?

10. Has any demurrage under the said charter party been paid to anyone?

11. If so, when was it paid and to whom?

ROBERT O. HARRIS,

*United States Attorney.*

By CHARLES P. CURTIS, Jr.,

*Special Asst. U. S. Attorney.*

In United States District Court

*Minute entries*

On the 13th day of said November, said cause was set down for hearing on the motion to pay freight money into court, the Honorable Elisha H. Brewster, district judge, sitting.

On the said 13th day of November, the following special appearance of Palmer & Parker Company and objection to payment of

18

In United States District Court

*Special Appearance of Palmer & Parker Company*

Filed November 13, 1922

Now comes Palmer & Parker Co., of Charlestown, City of Boston, within this district, and appears before this honorable court for the purpose of opposing a certain motion of the libellant in the above-entitled cause, which motion is now before this honorable court, and by which the said libellant seeks to compel Palmer & Parker Co. to pay into the registry certain moneys alleged to be due upon a certain charter-party of affreightment of the S. S. "Mount Shasta."

And Palmer & Parker Co., saying that it is in truth the Palmer & Parker Co. named in the said libel, now appears before this honorable court specially and without prejudice and for the sole purpose of opposing this motion.

And Palmer & Parker Co. refers to those recitations in the said motion by the libellant made, which are as follows:

(1) "And whereas process in due form of law having issued against Palmer & Parker Co. of Boston in said district citing it to show cause why certain freight moneys due from it on account of a certain voyage of the S. S. 'Mount Shasta' should not be paid into court."

(2) "And whereas the said Palmer & Parker Co. not having paid any of the said moneys into court \* \* \*"

And as to the first of the recitations aforesaid, Palmer & Parker Co. denies that any process has issued against it out of this honorable court, "citing it to show cause why certain freight moneys due from it on account of a certain voyage of the S. S. 'Mount Shasta' should not be paid into court."

And as to the second of the recitations aforesaid, Palmer & Parker Co. denies that it has in any wise failed to comply with any monition or order which has at any time issued out of this honorable court in the above-entitled cause.

And for verification of this its denial of the allegations and innuendoes in the aforesaid recitations contained, Palmer & Parker Co. begs leave to call to the attention of this honorable court the record of the court in the above-entitled cause, and it submits that the said record verifies and substantiates this its denial.

And Palmer & Parker Co. denies that there was at the time of the bringing of said libel or at any time thereafter, or that there is now in its hands and possession, any sum of money or any fund to which the libellant may in any wise lay claim.

And Palmer & Parker Co. denies that there was at the time of the bringing of the said libel or at any time thereafter, or that there is now, in its hands and possession any property capable of seizure and arrest by process issuing out of this honorable court, in the above entitled cause.

And Palmer & Parker Co. denies that there is now in the custody of this honorable court any property seized or arrested pursuant to process issuing out of this honorable court in the above entitled cause, to which Palmer & Parker Co. has at any time laid claim or now claims.

And Palmer & Parker Co. denies that it is in any wise a party to this cause and says that in this cause this honorable court has no jurisdiction over it.

Wherefore Palmer & Parker Co. prays that the said motion be denied.

PALMER & PARKER CO.,  
By GORDON PARKER,  
*Vice President.*

THOMAS HUNT,  
GASTON, SNOW, SALTONSTALL & HUNT,

*Proctors.*

[Duly sworn to by Gordon Parker; jurat omitted in printing.]



In United States District Court

*Motion for default*

Filed November 13, 1922

Now comes the United States and moves that whereas the libel was filed on March 23, 1921, and certain interrogatories were propounded on November 9, 1922, and whereas no answer or  
20 answers have been filed to either the libel be taken as confessed and the Palmer & Parker Company be defaulted unless answers to the libel and to the interrogatories be filed within ten days.

ROBERT O. HARRIS,

*United States Attorney.*

By CHARLES P. CURTIS, Jr.,

*Special Asst. U. S. Attorney.*

In United States District Court

*Special appearance and objection of Palmer & Parker Company*

Filed November 16, 1922

Now comes Palmer & Parker Company, of Charlestown, city of Boston, within this district, and appears before this honorable court for the purpose of opposing a certain motion of the libellant in the above entitled cause, which motion is now before this honorable court, and by which the said libellant seeks to compel Palmer & Parker Company to answer to the said libel and to the interrogatories propounded to Palmer & Parker Company by the libellant.

And Palmer & Parker Company, saying that it is in truth the Palmer & Parker Company named in the said libel, now appears before this honorable court specially and without prejudice, and for the sole purpose of opposing this motion.

And Palmer & Parker Company says that no monition has issued against it out of this honorable court compelling it personally to appear to answer any allegation in the said libel contained; nor is it a claimant before this honorable court in the above entitled cause.

And Palmer & Parker Company says that though a copy of a certain precept, issued out of this honorable court in the above entitled cause, was delivered to it by the United States marshal for this district, the original of the said precept now upon the record of this honorable court in this cause fails to show that any property of any kind whatsoever was arrested and seized by any officer of this honorable court by virtue of the precept aforesaid.

And Palmer & Parker Company, for and in verification of  
21 its allegations aforesaid, begs leave to call to the attention of this honorable court the record of the court in the above entitled cause, and it submits that the said record verifies and substantiates its allegations aforesaid.

And Palmer & Parker Company says that the said libel is in form and substance a libel in rem; that the said libel sets forth no cause of action against Palmer & Parker Company in personam; nor does the said libel pray any relief against it in personam.

And Palmer & Parker Company says that if the United States of America has any claim against it in the premises, such claim must, under the rules of law and pleading in this honorable court obtaining, be enforced against it by an action in personam.

And Palmer & Parker Company denies that it is in any wise a party to this cause, and says that in this cause this honorable court has no jurisdiction over it.

Wherefore Palmer & Parker Company prays that the said motion be denied.

PALMER & PARKER CO.,  
By GORDON PARKER,  
*Vice President.*

THOMAS HUNT,  
GASTON, SNOW, SALTONSTALL & HUNT,  
*Proctors.*

[*Duly sworn to by Gordon Parker, jurat omitted in printing.*]

In United States District Court

*Order granting motion to file answer*

Nov. 17, 1922

On the 17th day of November, A. D. 1922, it was ordered by the court, the Honorable Elisha H. Brewster, district judge, sitting, that the motion that respondent file an answer be granted and that respondent's answer be filed within ten days.

In United States District Court

*Answer*

Filed Nov. 27, 1922

*To the District Court of the United States of America for the District of Massachusetts:*

An answer of Palmer & Parker Company, a Massachusetts corporation, having its principal place of business in Boston, within this district, to the libel of the United States of America in the above entitled cause.

Whereas there is before this honorable court a motion of the libellant in the above entitled cause, whereby the libellant seeks to compel Palmer & Parker Company to pay into the registry of the court certain alleged freight, and

Whereas a motion of the libellant, whereby the libellant sought to compel Palmer & Parker Company, under penalty of default, to answer to the said libel and to interrogatories propounded by the libellant, was on November 17, 1922, allowed by this honorable court, and Palmer & Parker Company was thereby ordered to answer within ten days from that day under penalty of default.

Now, therefore, Palmer & Parker Company, appearing under compulsion and by reason of the aforesaid order, and so appearing and protesting that it in no wise comes before this honorable court of its own free will and accord, Palmer & Parker Company, by way of exception unto the libel and unto the motions aforesaid, answers and shows cause why said motion to pay alleged freight into the registry of the court should be denied; why said order to answer should be vacated; and why the libel should be dismissed.

And in order that this honorable court may be more fully informed as to certain matters imperfectly and partially set forth in the libel, Palmer & Parker Company, upon knowledge, information and belief, affirmatively alleges and articulately propounds as follows:

1. That the United States of America was, and still is, the owner of the S. S. "Mount Shasta," as set forth in article 1 of the  
23 said libel, Palmer & Parker Company in no wise denies, but says that it had no notice or knowledge of the said ownership of the said vessel at any time prior to the filing of the libel.

2. That as to the allegations contained in Articles 2, 3, 4, 5, and 6 of the libel that a certain bare-boat or demise charter was on or about May 19, 1920, entered into by the United States of America acting through the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation, whereby the United States of America did demise and charter the said S. S. "Mount Shasta" unto the Mount Shasta Steamship Company and/or Victor S. Fox & Company, agents, for a period of thirteen months, are true, but Palmer & Parker Company says that it was in no wise a party to said demise charter, not had it at the time mentioned in the libel any knowledge of the execution or existence of such document, nor was it a party thereunto. And Palmer & Parker Company says that the libel in fact contains no allegation that Palmer & Parker Company was in any wise a party thereto or had any knowledge thereof.

3. That, as to certain provisions contained in, and facts relating to, said demise charter and the original execution thereof, Palmer & Parker Company says:

(a) That said demise charter was drawn and devised by employees and counsel of the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation, and was, pro forma, known as "the standard form charter sales agreement," and that said standard form charter was in that transaction used pro forma and without material variation, and that said demise charter is, therefore, a document drawn and devised by the libellant and said demise charter is, as to each and every one of the terms,

covenants and conditions embodied therein, to be strictly construed against the libellant.

(b) That said demise charter, as is alleged in Article 5 of the libel, contained the following provision:

"The owner shall have a lien upon all cargoes and all sub-freights for any amount due under this charter-party," but that paragraph 10 of said demise charter gave unto the libellant the right, in case of default of said demise charterer, to "withdraw the said vessel from the service of the charterer."

24 (c) That by virtue of the terms of said demise charter, and by reason of the delivery of said vessel thereunder the said demise charterers, as alleged in article 6 of the libel, the lawful possession and control of said vessel passed to said demise charterers, and said demise charterers thereby became owners of the said vessel pro hac vice; and as to all parties dealing, without notice and in good faith, with said vessel and/or said demise charterers thereafter during the term of said demise charter, said demise charterers were owners of said vessel and the libellant was without right, title, or interest in the premises, save and unless said demise charterers being in default, the libellant, upon said default, withdrew the said vessel from employment under said demise charter, and repossessed itself thereof.

4. That Palmer & Parker Company says of that charter-party of affreightment declared upon in article 7 of the libel:

(a) That it entered into a charter-party of affreightment covering the said S. S. "Mount Shasta" for one voyage from ports on the Gold Coast, West Africa, to Boston, for the carriage of a cargo of mahogany logs, and the said charter-party of affreightment was entered into on or about July 14, 1920, and was executed by Palmer & Parker Company and by Victor S. Fox & Company, Agents; and Palmer & Parker Company attaches hereto a copy of said charter-party of affreightment marked "Schedule A," and begs leave to refer thereto.

(b) That immediately preceding the execution of the said charter-party of affreightment, Palmer & Parker Company, being in need of tonnage, were informed by New York ship brokers that a certain steamship, by name "Mount Shasta," was at that time in European waters and was in position and prompt for August loading at ports of the Gold Coast, West Africa, and open for fixture.

(c) That upon the naming of said S. S. "Mount Shasta" to it, Palmer & Parker Company having assured itself of the insurability, position, size, and type of said vessel, did then charter said vessel without inquiry as to ownership, nor was any inquiry thereof incumbent upon it according to the custom of the trade among merchants and shipowners prevailing; nor did Palmer & Parker Company then, or at any time mentioned in the libel, know of the  
25 existence of the Mount Shasta Steamship Company or that it had any interest in the premises, as is declared in the amended libel.

(d) That Palmer & Parker Company refers to Schedule A hereof and says that paragraph 8 thereof provides as follows:

"Vessel to have a lien upon the cargo for all freight, dead-freight, and demurrage, and all and every other sum or sums of money which may become due the vessel under this charter."

And Palmer & Parker Company says that any right of lien arising out of said transaction of affreightment, to which it is a party or by which it may be bound, must arise out of, and exist by virtue of paragraph 8 aforesaid; and that said paragraph 8 limits and defines the liability of lien of Palmer & Parker Company in the premises, and that it is not, and can not be, otherwise bound.

5. That Palmer & Parker Company says of the reporting of the said S. S. "Mount Shasta" under the said charter-party of affreightment, the lading thereof, and the voyage thereof to the United States:

(a) That the said vessel arrived at the port of Axim, Gold Coast, West Africa, on August 7, 1920. And Palmer & Parker Company calls the attention of this honorable court to Article 8 of the libel, wherein the libellant alleges that said demise charterers were in default unto the libellant on August 1, 1920. And Palmer & Parker Company says that upon that day and the day succeeding the said S. S. "Mount Shasta" was at the port of Gibraltar, and that said vessel did thereafter proceed to said port of Axim, and that said vessel entered upon her employment under said charter-party of affreightment subsequent to the default of said demise charterer, and that the said vessel was not bound by said charter-party of affreightment at the time of said default, but though, as the libellant alleges, said demise charterer was then in default, the libellant did allow said vessel to remain in the employment of said demise charterer and after said default did said vessel load her cargo. Nor did the libellant then, or at any time in the libel mentioned, deny the right, title, or interest of the said demise charterer in the premises.

(b) That said vessel, being laden, did upon September 19, 1920, sail from said port of Axim bound for the port of Boston, but said demise charterer did fail in its duty to Palmer & Parker Company as to seaworthiness of said vessel and her fitness for her voyage, and the said demise charterer did also fail properly to disburse said vessel thereafter, and said vessel did repeatedly deviate and did for a long time lie at the ports of Freetown, Africa; St. Vincent, Cape de Verde Islands; Dakar, Africa, and at Bermuda awaiting disbursements.

(c) That the libellant, though it had knowledge of the aforesaid detention, deviations and delay of said vessel, and though it had at agent, correspondent or representative at Gibraltar and at each and every one of the ports aforesaid, did fail to withdraw the said vessel from employment under said demise charter and to repossess itself thereof; nor did it undertake to disburse said vessel that she might be upon her voyage and earn freight.

6. That Palmer & Parker Company says of the arrival of said vessel at the port of Boston, and of the discharge thereof:

(a) That said vessel arrived at said port February 19, 1920, having undergone no extraordinary perils of the seas and navigation upon her voyage, but having dallied and delayed for five months in the making of a passage normally made by vessels of her type and speed, in about 30 days. And by reason of the delay aforesaid, the business of Palmer & Parker Company did suffer grievous hurt, and large losses of money were occasioned and incurred thereby.

(b) That said vessel, upon arrival, reported to Rogers & Webb, agents appointed by one George W. Sterling, receiver for said demise charterer.

(c) That the approach and arrival of said vessel was known to the libellant, who was present in Boston through its agents, the United States Shipping Board Emergency Fleet Corporation, but the libellant did not withdraw said vessel from employment under said demise charter upon said arrival at Boston.

(d) That the said vessel did discharge her cargo into lighters of Palmer & Parker Company and said discharge of the said vessel was completed March 7, 1921, but the libellant did at no time prior to the completion of discharge of said vessel assert any right, title or interest to or in the said vessel and/or the freight moneys which might

be, or become, due under the said charter party of affreightment; nor does the libellant in its libel assert that any demand was made upon Palmer & Parker Company at any time prior to the completion of discharge as aforesaid; nor in fact, does the libellant allege in its libel any demand whatsoever upon Palmer & Parker Company prior to the filing of this libel, March 23, 1921.

(e) That the libellant did not withdraw said vessel from employment under said demise charter; nor did it repossess itself thereof at any time prior to the filing of this libel, but the libellant did allow the vessel to continue and remain in the possession and control of said demise charterer and George W. Sterling, receiver thereof. And the said vessel, being so possessed and controlled, did lie in said port until June 7, 1921, upon which day the libellant did withdraw said vessel from employment under the said demise charter, and the libellant did then finally repossess itself thereof.

(f) That Palmer & Parker Company calls to the attention of this honorable court the allegations in the libel contained and says that said allegations show that said demise charterer had been and remained in default in payment of charter-hire unto the libellant for seven months and seven days prior to the arrival of said vessel at said port of Boston; and Palmer & Parker Company says that said demise charterer did thereafter continue and remain in default in payment of charter-hire to the libellant until June 7, 1921, when the libellant finally repossessed itself of said vessel; and Palmer & Parker Company says that the total period of default

of said demise charterer before repossession of said vessel by the libellant was ten months and seven days.

7. That Palmer & Parker Company especially denies that said demise charterer did perform the obligations upon it incumbent under the said charter-party of affreightment; and Palmer & Parker Company also especially denies that it is now or has ever been indebted to the said demise charterer or to any person whatsoever for freight in any sum whatsoever because of the aforesaid transaction of affreightment.

28 8. That on March 23, 1921, the libellant did simultaneously file in this honorable court, two separate libels, and said libels stand upon the docket of the court as Civil No. 1968 and Civil No. 1969, respectively; and the second of said libels is the libel in this cause, and the first of said libels is like unto the second, save that the first is against the cargo, sub-freights, charter-hire and/or sub-charter-hire of the S. S. "Mount Shasta" and said libels are both of them in form libels in rem, and the property declared upon in each of them is alleged to be in the possession and control of Palmer & Parker Co., Charlestown, Boston, in this district; and two warrants did issue from out this honorable court, and said warrants, though several, were simultaneously served upon Gordon Parker, vice president of Palmer & Parker Co., and deputies of the United States marshal for this district did seize certain logs within the booms and yards of Palmer & Parker Company in Charlestown, and said deputies did possess themselves thereof in the name of this honorable court, and did remain in possession thereof to the hurt of Palmer & Parker Company and to the detriment of its business. And Palmer & Parker Company did thereupon communicate with its proctors, and its proctors did thereafter file appearances in this honorable court for the purpose of vacating the seizure of the property aforesaid, and in order that they might protect the interests of Palmer & Parker Company in the premises and might save it harmless from further harassment and hurt in the causes aforesaid. And for said purposes alone did the proctors of Palmer & Parker Company appear before this honorable court and said proctors did, so appearing, make claim unto the said property seized, and did move this honorable court to vacate the attachment aforesaid. And this honorable court did, after a full hearing, determine that the seizure aforesaid was illegal, unauthorized and contrary to the rules and course of practice in this honorable court in like causes obtaining, and warrant did issue from out this honorable court whereby the said property was restored unto Palmer & Parker Company.

9. That Palmer & Parker Company refers to article 7 of the libel and to the allegations therein contained, but more particularly to the concluding cause thereof which alleges "that said sum is now in the hands and possession of said Palmer & Parker Co." And Palmer &



Parker Company also refers to that motion now before this honorable court whereby the libellant invokes the power of this honorable court to compel Palmer & Parker Company to pay into the registry of the court, said moneys so alleged to be in the hands and possession of Palmer & Parker Company. And Palmer & Parker Company says:

(a) That it is not within the power of the libellant to transmute an alleged debt or disputed chose-in-action into a sum certain or fund designate by the mere allegation "that said sum is now in the hands and possession of said Palmer & Parker Co." and that said allegation is in no wise a statement of fact made upon knowledge, information, and belief, but said allegation is a mere fiction of pleading and an abuse of the rules of pleading in causes of admiralty and maritime jurisdiction in this honorable court prevailing.

(b) That this honorable court, after hearing, has in Civil No. 1968 found that the aforesaid cargo of logs was delivered to Palmer & Parker Company without reservation of lien and under no bond or stipulation for the payment of freight. And in verification hereof, Palmer & Parker Company refers to the record of this honorable court in Civil No. 1968.

(c) That there was not, at the time of the filing of this libel, nor was there at any time thereafter, nor is there now, in the hands and possession of Palmer & Parker Company any sum of money or any fund to which the libellant may in any wise lay claim, or any property capable of seizure and arrest by process issuing from out this honorable court in the above entitled cause, or any property or other proceeds of property which is in any wise attached to or bound by this proceeding in rem.

(d) That the libellant may not invoke admiralty rule 37 to assist it in maintaining the allegations in its libel contained by creating out of the general property of Palmer & Parker Company a fund to satisfy the libellant, and to confirm, establish and validate the libel now before this honorable court, to the further impairment of the capital of Palmer & Parker Company, and to the increase of the pecuniary loss already suffered by Palmer & Parker Company by reason of the transaction of affreightment aforesaid.

Therefore, Palmer & Parker Company says that this honorable court has no jurisdiction in the premises and ought not to proceed to order Palmer & Parker Company to pay into the registry of the court the alleged moneys aforesaid.

10. That Palmer & Parker Company refers to the motion of the libellant allowed by this honorable court on November 17, 1922, whereby Palmer & Parker Company was ordered to answer to the libel and the interrogatories propounded unto it by the libellant, by reason of which motion and order Palmer & Parker Company is now before this honorable court. And Palmer & Parker Company says:

(a) That the appearance of its proctors which stands upon the record of this honorable court whereof the libellant seeks to avail

itself was filed under the circumstances and conditions set forth in article 8 hereof, and that the purpose of the aforesaid appearances having been accomplished by the warrant of this honorable court thereafter issued in Civil No. 1968, the said appearance in this cause was at no time thereafter perfected by the making of a claim or by the filing of any bond or stipulation for costs or otherwise in this cause.

(b) That this libel is in form and substance a libel in rem; that said libel sets forth no cause of action against Palmer & Parker Company in personam, nor does said libel pray any relief against Palmer & Parker Company in personam, and if the libellant has any claim against Palmer & Parker Company in the premises such claim must, under the rules of law and pleading in this honorable court in cause of admiralty and maritime jurisdiction obtaining, be enforced against it by an action in personam brought by Victor S. Fox & Company or its privies.

(c) That no property seized and arrested by process issuing  
31 from out this honorable court in this cause is now within the custody of this honorable court; nor is any fund or sum of money now in the hands and possession of Palmer & Parker Company now or at any time due to said demise charterer or to any person whatsoever; nor is Palmer & Parker Company before this honorable court as a claimant in this cause; nor has process in personam issued unto it whereby it has been made defendant to a proper proceeding in personam.

Therefore, Palmer & Parker Company says that this libel is in form and contents a libel in rem, and that no action can be maintained against Palmer & Parker Company in the premises in the suit of a libellant who seeks to proceed against Palmer & Parker Company in personam, but after the manner of proceedings in rem, and that no property or res being now within the custody of this honorable court or within its jurisdiction or even in existence in this cause, this libel in rem has become, and is, a nullity, and this cause is, according to the rules of law and practice in causes of admiralty and maritime jurisdiction obtaining, *coram non iudice*.

Therefore, Palmer & Parker Company says that this honorable court has no jurisdiction of any fund or res and ought not to proceed to hear and adjudicate this cause or to compel Palmer & Parker Company to answer the libel and the interrogatories propounded to it by the libellant.

11. That Palmer & Parker Company refers to article 10 of the libel and says that the general maritime law gives to shipowners no lien upon freights and/or subfreights earned by a vessel while within the possession and control of a demise charterer who has entered into, and remains in, possession and control of such vessel under a demise charter like that demise charter declared upon by the libellant; nor

does any such lien exist by virtue of any Federal statute or any local statute within this district obtaining.

Therefore, Palmer & Parker Company, says that this honorable court has no jurisdiction and ought not to proceed to enforce the alleged lien declared upon in the libel, there being no true lien declared upon in the libel nor any property designated by the libel to which said alleged lien can attach.

12. That all and singular the premises are true and in verification thereof, if denied, Palmer & Parker Company begs leave to refer to the record of this honorable court and to the exhibits, depositions and other proofs to be by it exhibited in this cause.

Wherefore, Palmer & Parker Company prays:

That this honorable court deny the aforesaid motion to compel it to pay the alleged moneys aforesaid into the registry of the court;

That this honorable court vacate the aforesaid order of November 17, 1922, that Palmer & Parker Company answer the libel and the interrogatories therewith propounded;

That this honorable court pronounce against and dismiss the said libel and to condemn the libellant in costs; and otherwise right and justice to administer in the premises.

PALMER & PARKER COMPANY,  
By GORDON PARKER,

*Vice President.*

THOMAS HUNT,

GASTON, SNOW, SALTONSTALL & HUNT,

*Proctors.*

[*Duly sworn to by Gordon Parker. Jurat omitted in printing.*]

33

#### SCHEDULE A

*Exhibit to answer*

Stern. Cable Address Brookhoo, New York, Liebers, Watkins,  
Scotts. Codes: A. B. C. & Improved Western Union

BROAD STEAMSHIP AND NAVIGATION CO. INCORPORATED,

STEAMSHIP AND CHARTERING AGENTS,

*50 Broad Street, New York.*

This charter party, made and concluded upon in the city of New York, July 14, 1920, between Victor S. Fox & Company, agents, of the S. S. "Mount Shasta" of ——— of the measurement of 3,012 tons net register or thereabouts, now trading ——— of the first part and Palmer & Parker Company, merchants, of Boston, Mass., of the second part.

Witnesseth that the said party of the first part agrees on the freighting and chartering of the whole of the said vessel (with the exception of the cabin) and necessary room for the crew and the

storage of provisions, sails, fuel, and cables) or sufficient room for the cargo hereinafter mentioned, unto said party of the second part for a voyage from three ports, Gold Coast, West Africa, Half Assinie, Axim, and Secondi, to Boston, Mass. Vessel to discharge at berth designated by charterers, where she may always safely lie afloat. Vessel to pay port charges, at only one loading port or so near there-to as she can proceed with safety and there deliver her cargo on the following terms:

1. The said vessel shall be tight, staunch, strong, and every way fitted for such a voyage and receive on board during the aforesaid voyage the merchandise hereinafter mentioned; and no goods or merchandise shall be laden on board otherwise than from the said party of the second part, or agent.

2. The said party of the second part doth engage to provide and furnish to the said vessel a full and complete cargo of round and square mahogany logs on and under deck, and to pay to said party of the first part, or agent, for the use of said vessel during the voyage aforesaid (\$25) twenty-five dollars per ton of 2,240 pounds, payable in United States currency or its equivalent, fifty (50%) per cent of the estimated amount of intake weight of cargo loaded at loading ports, is to be prepared in New York (said prepaid freight to be considered due and earned and irrevocable, vessel and/or cargo lost or not lost) upon receipt of cable advice from the master that the vessel is loaded with the number of tons aboard.

All freight and other charges payable in U. S. gold coin or its equivalent free of discount or commission.

3. The act of God, restraint of princes and rulers, the country's enemies, fire and all and every other dangers and accidents of the seas, rivers and navigation of what nature and kind soever during the said voyage, riots, strikes, fire, floods or any extraordinary occurrence beyond the control of either party, always mutually excepted.

4. It is agreed that the lay days for loading and discharging shall be as follows: Commencing from the time the captain reports his vessel ready to receive or discharge cargo; berth available or not,

logs to be furnished alongside and slung as fast as vessel can  
34 load and stow in suitable hours and weather, Sundays and holi-  
days excepted; for discharging, cargo to be received as fast  
as vessel can deliver in suitable hours and weather, Sundays and holi-  
days excepted. Loading and discharging to be for account of steamer.  
Steamer's obligation to cease when logs are discharged on wharf  
or wherever designated by charterers.

5. Also, that for each and every day's detention by default of said party of the second part, or agent, (\$1,500) fifteen hundred dollars per day, day by day, shall be paid by the said party of the second part, or agent, to the said party of the first part, or agent.

6. The cargo or cargoes to be received and delivered alongside the vessel at such wharf or place as charterers or their agents, may designate, where she can load and discharge, always safely afloat, within reach of her tackle; and lighterage, also extra lighterage and wharf-

age, if any, at the risk and expense of the cargo. Lay days not to commence before July 25th, 1920. Charterers have the option of cancelling this charter party should vessel not be at loading port on or before August 25, 1920. Vessel to be free of wharfage at loading and discharging port, logs to be shipped weighing over five (5) tons except at master's option.

7. The bills of lading to be signed without prejudice to this charter, but at not less than chartered rates.

8. Vessel to have a lien upon the cargo for all freight, dead freight, and demurrage, and all and every other sum or sums of money which may become due the vessel under this charter.

9. It is also mutually agreed that this shipment is subject to all the terms and provisions of, and all the exemptions from liability, contained in the act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An act relating to navigation of vessels, etc." Seaworthiness warranted only so far as ordinary care can provide, and owners are not liable for loss, detention or damage arising from latent defects existing at the time of sailing. General average, if any, to be settled according to York-Antwerp rules of 1890 and Antwerp rule of 1903, or the local custom of the port of New York, at owner's option.

If the owners shall have exercised due diligence to make the vessel in all respects seaworthy, and to have her properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage, or disaster, resulting from accident or fault or errors in navigation, or in the management of the vessel, or from any latent or other defect in the vessel, or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage—provided the defect or the unseaworthiness was not discoverable by the exercise of due diligence—the shippers, consignees, or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect to the cargo, and shall contribute with the owners in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such accident, danger, or damage or disaster, had not resulted from, or been occasioned by, faults or errors in navigation, or in the management of the vessel, or any latent or other defect or unseaworthiness.

10. A commission of one and one-quarter per cent. on the amount of this charter, renewals or duplications and demurrage payable by vessel and/or owner on the signing of this charter party, ship lost or not lost, charter cancelled or uncanceled to Broad Steamship & Navigation Co. Inc.

11. To the true and faithful performance of all and every of the foregoing agreements, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators, and assigns, each to the other, in the penal sum of estimated amount of freight.

35 In witness whereof we hereunto set our hands the day and year first above written.

VICTOR S. FOX & COMPANY, INC.,  
Agents,

(Signed) By GEORGE W. BLAKELEY,  
Witness: Vice President,  
Vice President,

(Signed) PALMER & PARKER COMPANY,  
By WM. I. PALMER, Treas.

Witness:  
WILLIAM W. SLACK.

It is hereby understood and agreed that lay days for discharging, if required, shall not commence until forty-eight (48) hours after captain reports vessel ready to discharge cargo.

It is also hereby agreed and understood that charterers will establish a letter of credit, upon signing charter party with a New York bank for the balance of the freight to be payable upon the out-turn weight of the cargo, as agreed upon by both parties.

Also at the same term, to wit, November 29, 1922, said cause was set down for hearing and heard in part by the court, the honorable, James M. Morton, Jr., district judge, sitting.

In United States District Court

*Answer of Palmer & Parker Co. to interrogatories*

Filed December 1, 1922

1. Yes. A copy of this charter is annexed to the answer of Palmer & Parker Co.

2. A cargo mahogany logs was loaded under said charter-party and was, after months of delay, brought to Boston in a worm eaten and damaged condition, in violation of the provisions of this charter party rather than "by virtue of them."

3. We did receive a cargo of 2,247 logs, in the condition stated above, about 3,615 tons of them.

4. \$25 per ton of 2,240 pounds.

5. The charter-party provided for the payment of \$1,500 per day for each and every day's detention of the vessel by default of the charterer.

6. If "agreed to" means by a legal and valid agreement, the answer is—we say no such agreement was made. A purported agreement in writing as to demurrage in Africa which, we say, was obtained by duress and fraud, and is invalid, was signed in

36 Africa by the master of the vessel and one Sawyer, an agent of Palmer & Parker Co. for some purposes. It is hereto annexed, endorsed upon the bill of lading.

7. Yes, a copy is annexed.

8. Yes. As provided in said charter-party, 50% of the estimated amount of freight payable upon telegraphic advices of sailing of

vessel, the sum of \$52,500, erroneously estimated as 50% of said amount, was paid to Victor S. Fox & Company on or about September 2, 1920. Additional sums amounting to £4,347-1-2 sterling were paid during the voyage, the amount of which, in United States money, depends upon varying rates of exchange and costs of cable transfers. We cannot say that any of these payments were "freights agreed under the said charter-party". We say they amounted to much more than was earned or due under the agreements of the charter-party, and that large sums were paid before the time agreed upon.

9. This has been already answered under 8.

10. No.

11. See last answer.

PALMER & PARKER Co.

By F. D. SAWYER, *President*.

THOMAS HUNT,

GASTON, SNOW, SALTONSTALL & HUNT,

*Proctors.*

*Exhibit C to answer of Palmer & Parker*

#### Bill of lading

Shipped in good order and condition by R. D. Sawyer of Axim, West Africa, in and upon the tight, staunch, and strong steamer called the "Mount Shasta" whereof A. Kuipers is master for this present voyage and bound for Boston, Mass., U. S. A. with liberty to call at any ports in any order, to sail without pilots and to tow and assist vessels in distress and to deviate for the purpose of saving life and property.

Two thousand two hundred and forty-four (2,244). (Seccondee, 1,126 logs; Axim, 1,118 logs.) Logs of mahogany.

Said to contain two million two hundred and twenty-six thousand one hundred and ninety-five (2,226,195) feet more or less, which are to be delivered in like good order and condition at the said port of Boston, Mass., U. S. A.

The act of God, restraint of princes and rulers, perils of the sea excepted. Also fire, barratry of the master and crew, pirates, collision, strandings, and accidents of navigation or latent defects in, or accidents to hull and/or machinery, and/or boilers always excepted even when occasioned by the negligence, default, or error of the pilot, master, mariners, or other persons employed by the ship-owner or for whose acts he is responsible not resulting, however, in any cases from want of due diligence by the owner of the ship or by the ship's husband and master.

Unto Palmer & Parker Co., 103 Medford St., Charlestown, Boston, Mass., U. S. A., or their assigns, he or they paying freight as per charter party dated the 14th day of July, 1920, all the terms and exceptions contained in which charter party are herewith incorporated.



General average payable according to the York-Antwerp Rules, 1890.

In witness whereof the master of the said ship hath signed two bills-of-lading all of this tenor and date, any one of which being accomplished, the others to be void.

Dated at Axim the 19th day of September, 1920.

(Signed) A. KUIPERS, Master.

(Of these logs are three hundred and seventy-three loaded on deck.)

(s.) A. K.

50% estimated amount intake weight cargo loaded at loading ports to be prepaid in New York upon receipt of cable advice from master stating vessel loaded and number of tons on board. 50% collectable on delivery of cargo.

Without prejudice to charter party dated 14th July 1920.

38 Demurrage incurred at loading ports eight days and six-tenths of a day (8.6), vessel has lien upon the cargo for this demurrage which is not paid at loading ports.

In this demurrage is not included shifting time as follows:

	Time used		
	d.	h.	m.
Axim-Secondree:			
Leaves Aug. 19th 8.30 p. m., arrives Aug. 20th			
6.53 a. m.	10	23	
Secondree-Axim:			
Leaves Aug. 20th 7.15 p. m., arrives Aug. 25th			
9.57 a. m.	14	12	
Axim-Secondree:			
Leaves Sep. 8th 11.20 p. m., arrives Sep. 9th			
8.20 a. m.	8	55	
	1	9	30

question whether this shifting time is demurrage to be decided in Boston.

The usual running hours between the ports by steamers being six.

The total amount of ship's disbursements is £4,347 1 2 as per statement endorsed.

(Measurements and description unknown. Condition unknown.)

(s) A. K.

[Duly sworn to by F. D. Sawyer jurat omitted in printing.]

39

In United States District Court

#### *Minute entries*

This cause was thence continued to the December term, A. D. 1922, when, to wit, December 5, 1922, this cause came on to be further heard and was fully heard by the court, the Honorable James M. Morton, district judge, sitting as foresaid.

This cause was thence continued under advisement from term to term to the June term, A. D. 1923, when, to wit, July 2, 1923, an opinion of the court was announced, dismissing libel.

This cause was thence continued from term to term to the December term, A. D. 1924, when, to wit, February 16, 1925, a final decree was entered.

On the 16th day of March, A. D. 1925, it was ordered that the above mentioned final decree, entered on February 16, 1925, be vacated.

In United States District Court

*Final Decree*

March 17, 1925

MORTON, J.—This case came on to be heard at the December term, 1922, and was argued by counsel, and upon facts proven and arguments, and upon mature deliberation, it is now, to wit, March 17, 1925, ordered, adjudged, and decreed that the libel in said cause be, and do stand, dismissed with costs for Palmer & Parker Co., respondents, taxed at \$-----

By the Court:

JAMES S. ALLEN, *Clerk*.

In United States District Court

*Minute entry of order allowing appeal*

From the foregoing final decree, the United States of America, libellant, claims an appeal to the Supreme Court of the United States, and said appeal is allowed accordingly.

40

In United States District Court

*Opinion*

July 2, 1923

MORTON, J.—This is a libel by the United States as owner of the steamship "Mount Shasta," against certain sub-freights alleged to be due to her. Palmer & Parker Company, from whom, as the libel alleges, the sub-freights in question are due, has appeared to deny that allegation and the jurisdiction of the court; and the case has been heard only upon the question of jurisdiction. The facts on this issue are as follows:

The "Mount Shasta" is a Shipping Board vessel which, on 19 May, 1920, was chartered under the usual charter-sale form to the Mount Shasta Steamship Company. The charter provided that, "The owner shall have a lien upon all cargoes and all sub-freights for any amounts due under this charter party."

Under date of 14 July, 1920, the charterer, through its agents Fox & Co., made a cargo-charter of the steamer to Palmer & Parker Company, of Boston, for a voyage to the Gold Coast, West Africa, for mahogany logs, the Palmer & Parker Company agreeing to furnish a full cargo and to pay a stipulated freight. By this sub-

charter, fifty per cent of the estimated freight was payable in New York upon advice from the master that the cargo had been loaded.

The steamer proceeded to Axim, on the Gold Coast, and at that port and Secondi near by she loaded a cargo. The advance freight was paid, and she began her homeward voyage. She was greatly delayed by the failure of the charterer (by which I mean the Mount Shasta Steamship Company and its agents, Fox & Co.) to remit funds with which to pay for necessary coal, cleaning the hull, and repairs to the machinery; so that the voyage instead of taking about thirty days, as it ought to have done, was not completed for about five months. This delay was caused entirely by the fault of the charterer; the cargo-owner was in no way responsible for it. The cargo-owner from time to time made advances to the master to enable the steamer to proceed, although it was under no obligation to do so.

The Government contends that there is due to the steamer under the cargo-charter about \$37,000 freight money and \$12,000 demurrage; and that by the terms of its charter it is entitled  
41 // to maintain a suit in rem against these moneys in the hands of Palmer & Parker Company. Palmer & Parker Company, on the other hand, contend that the steamer was unseaworthy and that this defect and deviation and delay caused damage to an amount largely in excess of the unpaid freight money; that no freight money is due; and that there is therefore no res and no basis of jurisdiction.

It should be noticed that the present proceeding is not against Palmer & Parker Company, nor against the cargo, which has in effect been delivered clear of lien. It is not a proceeding to which either the vessel, or her charterer, or the cargo-owner is a party. It is, as has been said, a libel in rem by the owner against freight money alleged to be due the vessel from Palmer & Parker Company.

I assume, as contended by the libellant, that freight money due and payable constitutes a res of which an admiralty court has jurisdiction; but to have that effect the freight-money must be actually due and liability for it must I think either be admitted by the person charged, or must be so clear and obvious as to leave no room for bona fide denial. The mere assertion that freight is due from a certain person, denied in good faith by the party charged, does not, it seems to me, create a res within the jurisdiction of the admiralty court. Such a claim might be made the basis of a suit. But a claim is not a res in this sense. A suit of this character is basically different, as was recently pointed out in *The Yankee Blade*, 19 How. 82 (cited in *Kaisha v. Pacific Export Co.*, U. S. Sup. Ct., Feb. 1, 1923), from a proceeding to enforce a disputed claim or garnishee process. The res is in the nature of a fund in controversy. It must exist when the suit is begun or there is no foundation of jurisdiction. And the court can not assume that freight money is due in order to draw to itself jurisdiction to determine whether that assumption is correct.

42 No case in admiralty which throws much light on the question has come to my attention. In *American Steel Barge Company v. C. & O. Coal Agency*, 115 F. R. 669, relied on by the libellant, there seems to have been no question as to the freight being due. There is, however, a rather close analogy in the jurisdiction of the bankruptcy court over summary proceedings brought by a trustee to recover in the hands of a third person property alleged to belong to the bankrupt estate. If the ownership is conceded to be in the estate summary process lies; and it also lies if the denial of the estate's title is obviously unfounded and colorable. But if the possessor of the property claims to own it in good faith, that is the end of summary jurisdiction. In *re Tarbox*, 185 F. R. 985. There is a suggestion of what amounts to the same practice in the opinion in the *American Steel Barge Co. case* (p. 674).

The general appearance by Palmer & Parker Company did not under the facts disclosed amount to an admission that there was such a res and that consequently the court had jurisdiction. See *The Berkely Deas v. Berkley*, 58 F. R. 920. Nor is the mere fact that goods have been transported and compensation earned for that service necessarily sufficient to establish that fact. Freight money in a proceeding of this character is the sum clearly and indisputably due to the vessel from the cargo owner or consignee when the libel is filed. *Snow v. Carruth*, 1 Sprague (Mass. D. Ct.) 324.

The Government's only right in the matter rests on the provision in its charter-party to the Mount Shasta S. S. Co. that, "The owner shall have a lien upon all cargoes and all sub-freights for any amounts due under this charter-party. With nothing but this to go on, the Government is in effect trying to cut in ahead of both the vessel and her charterer, and to compel the cargo-owner to pay to its sums which could not be recovered by either of the others—the result being (if the Government's position is sustained) that the cargo owner must pay to it the entire freight, although having suffered heavy loss by the bad condition and mismanagement of the vessel, and be remitted for reimbursement to a claim against

43 a bankrupt concern into whose hands the Government placed her. The Government's rights rest on the charter party and must be worked out through the person with whom the Government contracted. In the opinion in the *American Steel Barge Co. case*, supra, it is said that "The libellant holding a lien on sub-freight becomes subrogated to all the remedies of the charterer" (p. 674). If neither the steamer nor her charterer have any lien in respect to these freights, the Government has none. *Vane v. A. M. Wood & Co.*, 231 F. R. 353, 355. The delivery of the cargo terminated all maritime liens upon it. The controversy between the vessel and her charterer on one side, and the cargo owner on the other, can be tried out in several different ways; but it can not be tried out in a suit like the present proceeding to which none of them are parties.

I have no doubt that Palmer & Parker Company are acting in entire good faith in denying that anything is due from them to the steamer, and in asserting that, on the contrary, they have a claim against her substantially in excess of all sums claimed to be due as freight and demurrage. It is unnecessary to discuss the other points argued. I find and rule that no case is shown within the jurisdiction of this court, and for that reason alone an order may be entered dismissing the libel.

In United States District Court

*Petition for appeal*

Filed March 21, 1925.

*To the Honorable James M. Morton, Jr., Judge of the United States District Court for the District of Massachusetts:*

Now comes the libellant and, feeling himself aggrieved by the final decree of this court entered on the 17th day of March, hereby prays that an appeal may be allowed to him from the said decree to the Supreme Court of the United States, and, in connection with this petition petitioner presents his assignment of errors.

44 Petitioner further prays that an order of supersedeas may be entered herein pending final disposition of the case.

HAROLD P. WILLIAMS,  
*United States Attorney.*

LAWRENCE P. CURTIS,  
*Second Assistant U. S. Attorney.*

*Petition for appeal allowed:*

J. M. MORTON, JR.,  
*U. S. District Judge.*

In United States District Court

*Assignments of Error*

Filed March 21, 1925

*To the Honorable James M. Morton, Jr., Judge of the United States District Court for the District of Massachusetts:*

Now comes the libellant and in connection with his petition for appeal says that in the record, proceedings, and final decree aforesaid manifest error has intervened to the prejudice of the libellant, to wit:

(1) The court erred in holding that the freights and demurrage still unpaid by Palmer & Parker Company were not a sufficient res upon which to found a proceeding in rem.

(2) The court erred in holding that it did not have jurisdiction of the proceeding in rem brought by the libellant.

(3) The court erred in holding that the libellant did not have a lien upon sub-freight and demurrage in the hands of Palmer & Parker Company.

(4) The court erred in holding that no case was shown within the jurisdiction of the court.

HAROLD P. WILLIAMS,  
United States Attorney.  
By LAURENCE CURTIS,  
Second Assistant U. S. Attorney.

45 In United States District Court

*Judge's certificate*

Filed November 18, 1925

The District Court of the United States for the District of Massachusetts hereby certifies to the Supreme Court of the United States, in accordance with section 238 of the Judicial Code as amended, that the judgment of dismissal herein is based solely on the ground that the sub-freights alleged to be due do not constitute a sufficient res to support an action in rem, and that therefore the case does not come within the admiralty jurisdiction of this court.

JAMES M. MORTON, Jr.,  
United States District Judge.

NOVEMBER 18, 1925.

46-47 [Citation in usual form showing service on John W. Lawrence omitted in printing.]

48 [Clerk's certificate to foregoing transcript omitted in printing.]

49 In United States District Court

*Order enlarging time*

May 9, 1925

[Title omitted.]

For good cause shown it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including June 8, 1925.

J. M. MORTON, Jr.,  
U. S. District Judge

50 In United States District Court

*Order enlarging time*

June 8, 1925

[Title omitted.]

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Wednesday, July 8, 1925.

J. M. MORTON, Jr.,  
U. S. District Judge.

51 In United States District Court

*Order enlarging time*

July 8, 1925

[Title omitted.]

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Saturday, January 9, 1926.

JAMES A. LOWELL,  
*District Judge.*

52 In the Supreme Court of the United States

*Statement of points to be relied upon and designation by appellant to print the entire record filed nunc pro tunc as of Jan. 27, 1926*

The United States of America will rely on the following points in brief and in oral argument on the hearing of their appeal, viz:

1. Freight moneys earned by a vessel constitute a res of which an admiralty court has jurisdiction.

2. The fact that the person in possession of the freight moneys has a claim against the vessel for cargo damage does not destroy the res.

3. The fact that the person in possession of freight moneys earned by a vessel has a claim against the vessel for cargo damage will at most reduce the amount of the res.

4. The right to freight moneys earned by a vessel for carriage of cargo exists independently of any claim for cargo damages sustained on voyage on which the freight moneys were earned.

Appellant designates the entire transcript of the record on file to be printed.

WILLIAM D. MITCHELL,  
*Solicitor General.*

Service of a copy of the foregoing statement of points on which appellant will rely and of portions of the record to be printed acknowledged this      day of February, 1926.

\_\_\_\_\_  
*Counsel for Appellee.*

[File endorsement omitted.]

[Indorsement on cover:] File No. 31609. Massachusetts D. C. U. S. Term No. 267. The United States of America, appellant vs. Freights, Sub-Freights, Charter Hire, and or Sub-Charter Hire of the S. S. "Mount Shasta." Filed January 13, 1926. File No. 31,609.



Supreme Court of the United States, October Term, 1926

No. 267

The United States of America, appellant, *vs.* Freights, subfreights,  
charter hire, and/or subcharter hire of the S. S. "Mount Shasta"

*Stipulation as to printing record*

Filed March 18, 1927

By reason of certain omissions of material evidence from the record, and for the purpose of supplying the same, it is stipulated and agreed that the court, in considering the jurisdictional question certified, take all allegations of fact contained in the special appearance of the appellee, filed November 13, 1922 (R. p. 12); the special appearance and objection of the appellee, filed November 16, 1922 (R. p. 14), and the answer of the appellee, filed November 27, 1922 (R. p. 15), as having been made in good faith, and all facts purported to have been found by the court, as set forth in the opinion, as having been supported by the evidence, and by admission made in open court.

It is also stipulated and agreed that the exceptions to libel, appearing on page 5, and the answer, appearing on page 6 and continuing through page 10, shall be expunged from the record, said pleadings having been filed by inadvertence, never considered by the District Court, and included in this record by mistake.

WILLIAM D. MITCHELL,

*Solicitor General for the appellant, United States of America.*

GASTON, SNOW, SALTONSTREE & HUNT,

*Attorneys for Palmer and Parker Company, appellee.*

G. R. F.